APPENDIX

Order

Service Date
November 1, 1966

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D. C., on the 25th day of October, 1966.

Finance Docket No. 23732

SOUTHERN PACIFIC CO. ABANDONMENT (PORTION) WESTWOOD BRANCH IN LASSEN CO., CALIF.

Finance Docket No. 23910

WESTERN PACIFIC RAILROAD CO.—PURCHASE (PORTION)—SOUTHERN PACIFIC CO.

Finance Docket No. 24136

EAGLE LAKE LUMBER COMPANY—USE OF TERMINAL FACILITIES OF SOUTHERN PACIFIC CO.

Finance Docket No. 24254

EAGLE LAKE LUMBER CO.—ACQUISITION AND OPERATION—SOUTHERN PACIFIC CO.

Upon consideration of (1) the record in these proceedings, (2) the petitions of Eagle Lake Lumber Company (Eagle) for leave to file its petitions, for leave to intervene, to supplement the record and for reconsideration and modification of the order of Finance Board No. 3, dated March 31, 1966, approving the abandonment in Finance Docket No. 23732, (3) the reply to the petitions by Southern Pacific Company (Southern Pacific), (4) the application in Finance Docket No. 24136 by Eagle for an order under section 3(5) of the Interstate Commerce Act requiring Southern Pacific to permit applicant to use certain of its terminal facilities, (5) the motion to dismiss the application in Finance Docket No. 24136 by Southern Pacific,

(6) the reply by Eagle to the motion to dismiss, (7) the application filed in Finance Docket No. 24254 by Eagle under section 1(18) of the act for a certificate authorizing acquisition and operation by Eagle of the line proposed to be abandoned in Finance Docket No. 23732, (8) the protests to the Finance Docket No. 24254 application by Southern Pacific, the Railway Labor Executives' Association, and the Brotherhood of Locomotive Engineers, and (9) Eagle's July 20, 1966, letter petition requesting deferred processing of the Finance Docket No. 24254 application;

It appearing, That the petitioner in Finance Docket No. 23732, Eagle, suffered a major fire in 1965 which resulted in uncertainty concerning its future business activities and rebuilding program, and contributed to its failure to timely note Southern Pacific's abandonment notice and to timely protest the abandonment, that averments made by petitioner are reasonably pertinent to the issues already presented and that good cause is shown for granting Eagle leave to file its petitions and to intervene in this matter; and

It further appearing, That Eagle requests the said certificate and order in F. D. No. 23732 be modified by imposing a condition that the line to be abandoned be sold to any responsible party interested in maintaining a transportation service thereon for a consideration not less than the net salvage value of the property sought to be acquired; and that Southern Pacific in reply (1) disputes facts alleged by Eagle, and objects to their being received as evidence, (2) contends Eagle's use is speculative, and (3) states the requested condition would be against the public interest;

It further appearing, That Eagle in Finance Docket No. 24136 requests an order under section 3(5) requiring Southern Pacific to permit Eagle to use certain of its terminal facilities, including main line tracks, at Susanville, Calif., adjacent to the line proposed to be abandoned, that

applicant is not a common carrier by railroad and that our jurisdiction under section 3(5) is limited to such carriers; but that, in the event the related application in Finance Docket No. 24254 is granted and Eagle assumes the carrier status, probable jurisdiction would be present under section 3(5); and,

It further appearing, That the proceedings are interrelated with the said disputed facts relevant to each, and that assignment of the petitions and applications for separate hearing, or dismissal of the section 3(5) application for lack of jurisdiction, or deferred consideration of Eagle's section 1(18) application, would not be conducive to an orderly disposition of the proceedings because of their interrelation and the probable section 3(5) jurisdiction if Eagle's section 1(18) application is granted:

It is ordered, That the proceedings in Finance Docket Nos. 23732 and 23910 be, and they are hereby, reopened, and that the petition for leave to file the petitions in Finance Docket 23732 be, and it is hereby, granted, and that the petition for leave to intervene be, and it is hereby, granted.

It is further ordered, That Eagle in Finance Docket No. 24254 be, and it is hereby, directed to proceed with service of its application and give other notice thereof as required by Title 49, Sec. 41.2(c) of the Code of Federal Regulations (CFR), and to file with the Commission within 30 days from the date of service of this order, the Return to the Questionnaire, and give notice thereof as required by Title 49, Sec. 41.2(d) of the CFR;

It is further ordered, That the above-entitled proceedings be, and they are hereby, assigned for consolidated hearing at a time and place hereafter to be set.

By the Commission, Division 3, acting as an Appellate Division.

H. NEIL GARSON,
Secretary.

(SEAL)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

FLORIDA EAST COAST RAILWAY CO. *v.*
UNITED STATES ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA.

No. 715. Decided February 13, 1967.

PER CURIAM.

The motion of Dade County et al. to join Seaboard Air Line Railroad Company in the motion to affirm is granted.

The motions to affirm are granted and the judgment is affirmed.